

**EXHIBIT A**

Deposition of James Pappas  
 UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

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 KATERINA PLEW,

Plaintiff,

vs.

LIMITED BRANDS, INC.,  
 INTIMATE BRANDS, INC.,  
 LIMITED BRANDS STORE  
 OPERATIONS, INC.,  
 VICTORIA'S SECRET STORES  
 BRAND MANAGEMENT, INC.,  
 VICTORIA'S SECRET DIRECT  
 BRAND MANAGEMENT, LLC  
 AND VICTORIA'S SECRET  
 STORES, LLC,

Defendants.  
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DEPOSITION OF: JAMES PAPPAS

DATE: May 5, 2009

HELD AT:

The Holiday Inn Hotel  
 700 Main Street - Shippan Room  
 Stamford, Connecticut

- - -

Reporter: SUE A. TERRY, RPR/CRR

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Q. Well, let me ask you again maybe differently, just so I understand.

Supposing you were going to now source a new product from a manufacturer, how would the -- again, if you can generalize, how would the negotiation happen?

A. It would depend on the product and whether the product -- where the product idea came from, what type of product it was, what vendor has the capability, what price you were looking for from the manufacturers.

Q. It's specific to each vendor how that product would go?

A. Specific to each product.

Q. Specific to each product. Now, we've gone through the Senior VP, Design Operations title, and that takes us through 2005, as close as you can recall?

A. Uh-huh.

Q. At some point in 2005, you became Executive Vice President for Production Sourcing?

A. Right.

Q. Do you know roughly month and year or even just the year -- what the period of that job was?

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2 A. When it stopped, probably 2007  
3 or '08 -- late '07 or early '08.

4 Q. Okay. And can you tell me how your job  
5 responsibilities changed in that job?

6 A. At that job, I was the head of all of  
7 production and sourcing.

8 So my responsibility was to make sure that  
9 the product was manufactured properly and shipped  
10 properly.

11 Q. I guess I should've asked you this it at  
12 the beginning, but through all the jobs that we have  
13 talked about, were those focused on bras, on -- or  
14 were they across all products?

15 A. It was intimate apparel.

16 Q. That was the case in all the jobs we've  
17 discussed so far?

18 A. Correct.

19 Q. So that would -- I take it that would  
20 include anything that -- what I'm going to refer to  
21 grossly as "underwear"?

22 A. Yes.

23 Q. Okay. Now, during that period -- and I'm  
24 talking about the 2005 to 2007 or early 2008  
25 period -- did you then come to have someone you



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A. I didn't have much of a role in that one.  
It was designed -- it was a small quantity -- I  
mean, relatively for us.

It was a small quantity, so I didn't have  
much involvement in that one.

Q. Okay. Did you have any direct contact  
with anybody at DBA?

A. On that bra, no.

Q. Had you had contact with someone at DBA on  
other bras?

A. No, I talked mostly with DBA about overall  
strategy of the business.

Q. And who was your primary contact at DBA?

A. Elis Poleg.

Q. And is that a man?

A. Yes, it's the CEO.

Q. That person is the CEO, right. Other than  
Shock Absorber -- well, I should back up and ask the  
question.

Was Shock Absorber also sourced from DBA?

A. Yes.

Q. Other than Shock Absorber and the 100-Way  
Bra, were there any other products sourced from DBA?

A. I don't know. I don't recall. There may

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diligence process that it goes through to be sure that the vendor is a good partner to do business with?

A. Yes, it's the preproduction process.

Q. Can you explain to me what the elements of that process are?

A. You have to make sure that the product is producible in a bulk production environment at a certain price.

Q. Is there any due diligence with respect to the -- wherever the design comes from?

That's a terrible question. I'll try it again.

Is there any due diligence with respect to the design ownership of the product you're acquiring?

A. Yes. It depends on the product. If a product is designed internally, it's not usually an issue.

Q. Sure. To the extent it's designed externally, is there a due diligence to make sure the vendor owns the design they are selling you?

A. That's covered in the Master Sourcing Agreement.

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And the stipulation is clear, in that, if you bring a design to us, the onus is on the vendor to make sure that that design is, in fact, owned by them.

Q. We'll talk about that agreement in a second.

But other than the requirement -- other than the contractual requirement and Master Sourcing Agreement, does Victoria's Secret or any of the other Victoria's Secret entities engage in any kind of due diligence process on its own?

A. No.

Q. Now, turning to the Master Sourcing Agreement, are you aware that it has an indemnification provision?

A. Explain it, please.

Q. Well, do you know what "indemnification" means?

A. Not in this case, no.

Q. Let me show you some documents.

A. Okay.

MR. von SIMSON: We have been going about an hour.

Do you want to take five minutes?



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THE WITNESS: I'm fine.

MR. von SIMSON: I'm going to show Mr. Pappas three documents that have already been marked in this case as Exhibits 33, 34 and 35. I'm handing those to the witness.

BY MR. von SIMSON:

Q. I'll just ask you about each of these, in turn -- and again, take your time. I'll just start with Exhibit 33. Feel free to look at this as long as you would like to.

My question for you is going to be: Is this -- I'll say for the record that Exhibit 33 is a cover letter covering a document called "Purchase Terms Apparel."

A. Uh-huh.

Q. Now, you've identified, I know, a Master Sourcing Agreement.

Have you ever seen this document or a document like this before?

A. No.

Q. Okay. And let's look at Exhibit 34. I'll ask the same question: Have you ever seen this document or a document like this before?

And I should say, 34 is a cover called



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"Third-Party Brand Vendor Agreement," and then second page says, "Addendum Number One, General Sourcing Terms."

A. Yes, I have seen this.

Q. Okay. And what does this -- when is this agreement used?

A. I believe this is used when we're doing business with a vendor with commercialized product --

Q. Okay.

A. -- their design.

Q. Now, I'll just have you look -- and again, the same request that you take as long as you want to review this document.

But I'm going to direct your attention to paragraph fifteen, which has two parts, A and B, "Indemnity Insurance."

A. Yes.

Q. And I'll just ask you to look at that to the extent you need to and tell me if, having looked at that, you have any understanding of what that paragraph means?

A. Yes, I am familiar with that.

Q. Okay. And what's your understanding of --

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2 A. The understanding is that the vendor is  
3 fully responsible for any issues that come up, and  
4 the buyer -- meaning Victoria's Secret -- is not  
5 regarding the sale of the product.

6 Q. Okay. And would that include a lawsuit  
7 like this one for an infringement of a patent?

8 A. That is my understanding, yes.

9 Q. Do you know whether or not Victoria's  
10 Secret asked DBA to indemnify it in this case?

11 A. I called Elis Poleg and said "Per the  
12 terms of our agreement, we consider DBA to be fully  
13 responsible. And I don't know what's going to  
14 happen, but just be aware that this is a lawsuit."

15 Q. And what did he respond?

16 A. I think his response was something to the  
17 effect of, "Well, you know, that's our product.  
18 Don't worry about it," or something to that effect.

19 Q. Well, but did DBA indemnify Victoria's  
20 Secret in this case?

21 A. I don't know.

22 Q. Were you ever part of any discussion in  
23 which someone said, "DBA should be paying for our  
24 defense costs in this case"?

25 A. That discussion was the one I was part of,

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2 62 -- and I have done this. I have cut away the  
3 lining of that bra.

4 A. Uh-huh.

5 Q. You can see there's sort of a mesh strip  
6 inside it?

7 A. Yeah.

8 Q. Do you know what feature that strip  
9 performs?

10 A. That's a support that holds the breast.

11 Q. Does that perform an uplift function, to  
12 the extent you know?

13 A. I don't know in this bra whether it does  
14 or not.

15 Typically, that's either for uplift or  
16 support.

17 Q. That mesh inner lining?

18 A. The extra inner lining, yes.

19 Q. Do you know whether or not that has a  
20 name -- that feature?

21 A. No.

22 Q. Do you know Marie Zarkadas?

23 A. No.

24 Q. Did you ever meet her?

25 A. No.



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2 Q. Have you ever spoken to her personally?

3 A. No.

4 Q. Now, I take it -- well, let me ask you:  
5 Did you ever receive a telephone call from her?

6 A. I think I received a phone call and an  
7 E-mail.

8 Q. Okay. Do you recall roughly when those  
9 occurred?

10 A. In 2006, I believe.

11 Q. Okay. And do you recall whether or not it  
12 was a phone call or an E-mail in the first instance?

13 A. I actually thought they were phone calls.  
14 But I saw an E-mail yesterday, which made me say,  
15 "Oh, it was an E-mail."

16 So I don't know if it was a phone call or  
17 E-mail. I know there was at least one E-mail.

18 MR. von SIMSON: Okay. Let me -- I'll  
19 ask the reporter to mark now Exhibit 65.

20 (Whereupon, Pappas Exhibit 65:  
21 Marked for identification.)

22 BY MR. von SIMSON:

23 Q. Is this the E-mail you were talking about  
24 a minute ago?

25 A. Yes.



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2 Q. Now, this indicates -- I'm just going to  
3 read the first sentence.

4 "Unfortunately, I wasn't able to connect  
5 with you."

6 This is an E-mail -- I should identify for  
7 the record, Exhibit 65 bears VS 002115 from Maria  
8 Zarkadas to Jim Pappas, dated May 1st, 2006.

9 And the Subject is: "You Won't Regret  
10 This, We Promise."

11 In this case, it says, "Unfortunately, I  
12 wasn't able to connect with you when you returned my  
13 call last Wednesday."

14 Do you see where it says that?

15 A. Yes.

16 Q. Looking at this, does this refresh your  
17 recollection as to whether or not you called  
18 Ms. Zarkadas?

19 A. I can only assume I did based on this. I  
20 don't recall calling her.

21 Q. You don't recall having received a call  
22 from her?

23 A. No.

24 Q. Now, at or about this time, did you  
25 receive any materials from Ms. Zarkadas?

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2 A. Yes, she sent over a package.

3 Q. And was it a paper package or was it an  
4 E-mail attachment?

5 A. A paper package.

6 Q. Do you recall what was in that?

7 A. I sent it over to the attorneys.

8 Q. Did you open it?

9 A. I did not.

10 Q. Now, did there come a point where you  
11 agreed to meet with Ms. Zarkadas?

12 A. Yes.

13 Q. And was that sometime after this it  
14 E-mail?

15 A. That was prior to this, I believe.

16 Q. Okay. And how did you arrange that  
17 meeting?

18 A. Through my assistant.

19 Q. Okay. And I take it -- well, did that  
20 meeting ever take place?

21 A. No.

22 Q. Why not?

23 A. When I saw this E-mail, which I thought  
24 was a phone call -- when I saw this E-mail and I saw  
25 the part about Maidenform, it scared me to think

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this wasn't a real, new idea.

And I immediately called Carol Matorin, and she said, "Don't have that meeting. That's our policy," and canceled me.

Q. Okay. But before this, did you think it was a real, new idea?

A. I thought there was a possibility that it was.

Q. And what was the basis for you drawing that conclusion?

A. Someone saying, "I've got this great, new, revolutionary idea."

Q. And without knowing what the idea was, you scheduled a meeting with Ms. Zarkadas?

A. Yes.

Q. And this was the first time anybody ever sent you an unsolicited idea?

A. Yes.

Q. So, again, I just want to -- I'm going to try and understand the chronology of this the best I can.

Is it your recollection -- just tell me if you can't recall -- whether the first contact was by phone or E-mail from Ms. Zarkadas?

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2 A. I don't remember.

3 Q. And then you at some point called her; is  
4 that right?

5 A. Only -- it looks like I did. I don't  
6 recall calling her.

7 Q. Okay.

8 A. It could have been my assistant who  
9 called. I don't know.

10 Q. Was it before or after that call that you  
11 received this package from her?

12 A. After which call?

13 Q. Well, to the best we can tell, somehow,  
14 she made initial contact with you.

15 Then this E-mail seems to indicate that  
16 you called her back.

17 A. Uh-huh.

18 Q. Do you recall when in relation to those  
19 two contact points you received a package?

20 A. After; the package came after.

21 Q. Came after this E-mail?

22 A. As I recall, yeah.

23 Q. Okay.

24 A. To be honest, I don't recall.

25 Q. Okay.



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A. I say that, because I spoke to Carol Matorin, who said, "Don't talk to anybody."

And then I got a package and I sent it Carol Matorin.

MR. WARD: I would just like to caution you not to divulge specific legal advice that your counsel may have provided to you.

THE WITNESS: Okay.

BY MR. von SIMSON:

Q. Did Ms. Matorin provide specific legal advice to you?

MR. WARD: You can answer that yes or no.

THE WITNESS: What's the definition of "legal advice"?

MR. WARD: If you asked her an opinion on a legal matter and she provided it, as opposed to asking about a policy or things like that.

A. No, she advised me about policy.

BY MR. von SIMSON:

Q. What advice did she provide about the policy?

A. That you should -- that the policy is, we should not be meeting unsolicited vendors, and we

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2 A. I didn't recall that until I saw that, but  
3 it seems like that's right.

4 Q. Okay. So you have no --

5 A. I'm assuming that that's correct.

6 Q. But do you have any independent  
7 recollection of whether or not you scheduled an  
8 appointment with Ms. Zarkadas?

9 A. Definitely not.

10 Q. Then based on something, you thought that  
11 she might have a good idea; is that right? We don't  
12 know what it is?

13 A. Uh-huh.

14 Q. But you did draw that conclusion based on  
15 whatever; is that correct?

16 A. I assume that's the case. I don't recall,  
17 but if I set up a meeting -- if I set the meeting  
18 up, that would be the reason I set it up; yes.

19 Q. Okay. And then, again, I believe you  
20 testified sometime following this E-mail -- Exhibit  
21 65 -- you received a package from Ms. Zarkadas; is  
22 that right?

23 A. Yes.

24 Q. Okay. And it was a paper package?

25 A. Uh-huh.

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2 Q. And was it sent by --

3 A. It was an envelope of some sort.

4 Q. And you didn't open that?

5 A. No.

6 Q. And why didn't you open it?

7 A. Because I was advised by legal not  
8 to -- not to pursue this.

9 And when I got the package, I said, "I had  
10 better not open this, because that's pursuing it."

11 And I sent it straight to Carol.

12 Q. So when in time did you seek the advice of  
13 counsel about how you should handle this unsolicited  
14 idea?

15 A. I don't know exactly.

16 Q. Was it before you scheduled the meeting or  
17 after?

18 A. It must have been after or I wouldn't have  
19 scheduled the meeting; yes.

20 Q. Now, I think you also testified that  
21 something about the mention of "Maidenform" in this  
22 E-mail raised concerns on your part about  
23 Ms. Zarkadas' idea.

24 A. Uh-huh.

25 Q. Can you explain to me what it was about



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MR. von SIMSON: Well, I'm just going to say for the record -- and John, I'll follow up with Mike about this -- that to the extent that that file or whatever was in it was sent to Carol Matorin, it ought to at least be on the privilege log to figure out what the privilege is that was attached to it.

MR. WARD: It was produced to you.

MR. von SIMSON: The file was produced?

MR. WARD: It was a letter from Ms. Zarkadas with a copy of the patent attached.

MR. von SIMSON: That's the contents of the Carol Matorin file?

MR. WARD: Correct.

MR. von SIMSON: Okay.

BY MR. von SIMSON:

Q. I want to go back now to Exhibit 66. This is the E-mail in which you say to Ms. Kramer, "Keep going with the 100-Ways Bra development. As of now, we're okay."

And we've talked about that at some length.

Now, I think, again, what your testimony